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tomed to resort to play is held, in *Nelson v. McLellan* (Wash.), 60 L. R. A. 795, to be negligence which will render the one guilty thereof liable for injuries to a child by the explosion of one of the sticks, which was taken from the box by children who had resorted to the lot to play, and ignited by one of them in ignorance of its explosive character.

PRINCIPAL AND AGENT—DUTY TO DISCLOSE—CONSTRUCTIVE FRAUD.—An agent who is authorized by his principal to sell or exchange the property of the latter upon specified prices and terms is held, in *Holmes v. Cuthcart* (Minn.), 60 L. R. A. 734, to be in duty bound, upon learning that a more advantageous sale or exchange can be made, the facts concerning which are unknown to the principal, to communicate the same to him before making the sale as expressly authorized, and his failure to do so held to amount to a fraud in law.

CRIMINAL PROCEDURE—MISCONDUCT OF COUNSEL.—The conduct of the assistant prosecutor on a trial for rape, in repeatedly asking the son of the accused, on cross-examination, if he had not stated to a specified person that he suspected his father of having committed a similar offense with other girls, and that such conduct on the part of the accused caused the death of the witness's mother, and that if, at such conversation, the witness did not cry out and say: "I cannot go against my father even if he is guilty," is held in *State v. Irwin* (Idaho), 60 L. R. A. 716, to be ground for reversal.

CRIMINAL LAW—EVIDENCE—ADMISSIBILITY OF PRIVATE PAPERS.—On the trial of a criminal case, where private papers and property belonging to the defendant are offered in evidence against him, the court, in determining their admissibility, will not take into account the manner in which a witness obtained possession of them.

The introduction in evidence by the prosecution of private papers and property belonging to the defendant, which had been seized by officers, for the purpose of establishing his handwriting on certain policy slips and to show that he was in possession of them and the place where they were found, is not violative of the constitutional guaranty against compelling a prisoner to be a witness against himself. *People v. Adams* (Ct. App. N. Y.), 30 N. Y. L. J. 555. Citing *Commonwealth v. Tibbetts*, 157 Mass. 519; *Rulof v. People*, 45 N. Y. 213; *People v. Van Wormer*, 175 N. Y. 188; 1 Greenleaf's Evidence, sec. 245 a. Distinguishing *Boyd v. U. S.*, 116 U. S. 616.

In *People v. O'Brien*, 68 N. E. 353, the same court construed the following section of the New York Penal Code, chapter 9, relating to gaming: "No person shall be excused from giving testimony upon any investigation and proceeding for a violation of this chapter, upon the ground that such testimony would tend to convict him of a crime; but such testimony cannot be received against him upon any criminal investigation or proceeding." It was held that under this statute a witness cannot be compelled to disclose circumstances which would

aid his prosecution, and that any statutory protection short of *absolute immunity from prosecution* is insufficient. Modifying *People ex rel. Hackley v. Kelly*, 24 N. Y. 74. Following *Counselman v. Hitchcock*, 142 U. S. 547. Citing further *Smith v. Smith*, 116 N. C. 386, 21 S. E. 196; *Ex parte Cohen*, 104 Cal. 524, 38 Pac. 364, 26 L. R. A. 423, 43 Am. St. Rep. 127; *Ex parte Arnot Carter*, 166 Mo. 604, 66 S. W. 540, 57 L. R. A. 654; *Miskimins v. Shaver* (Wyo.), 58 Pac. 411, 49 L. R. A. 831.

See, also, *Emery's Case*, 107 Mass. 172, 9 Am. Rep. 22. See, also, *People ex rel. Levisohn*, N. Y. Law Journal, Oct. 29, 1903, and *People v. Dupounce* (Mich.), 94 N. W. 388.

FRATERNAL INSURANCE — CERTIFICATES — INCONTESTABLE CLAUSE — CONSTRUCTION — ESTOPPEL — LOSS OF GOOD STANDING — WHAT CONSTITUTES — SUICIDE — CONFORMITY TO LAWS OF ORDER — CONSTRUCTION.—In an action on a life insurance policy, where the defense is suicide, the presumption, in the absence of evidence on the subject, is that insured was sane when he committed the deed.

A clause in a fraternal certificate of life insurance that it is to be incontestable after a certain date from the issuance of the policy is to be liberally construed in favor of the insured.

A provision in the constitution of a fraternal insurance society that a certificate issued to a member shall be incontestable after a certain date from the issuance of the policy, provided that the member continue in good standing and fully comply with the laws and rules of the association, and that all dues and assessments be paid as required, estops the society from contesting the certificate on the ground of suicide of the member, which, under another clause of the constitution, is declared to avoid the certificate.

A provision in the constitution of a fraternal insurance society, that if the member "continue in good standing" the certificate shall be incontestable after a certain date from the issuance thereof, refers to such good standing as exists up to the time of death, and hence suicide, though elsewhere declared to avoid the certificate, does not involve loss of good standing.

Where the constitution of a fraternal insurance society provides for a trial and conviction to establish loss of good standing, the commission of suicide by a member, which is elsewhere forbidden by the constitution, does not involve loss of good standing within the meaning of a clause providing that the certificate should be incontestable after a certain date, the member continuing in good standing.

Where the constitution of a fraternal insurance society provides for a forfeiture of certificates, in one clause, through a loss of good standing, to be determined by trial and conviction, and in another clause by suicide, the distinct enumeration of the two causes of forfeiture indicates that the latter was not intended to be included in the former, and hence a clause making the certificate incontestable where the member was in good standing is available to the beneficiary of a member who committed suicide.

A fraternal insurance contract provided that the certificate should be void if the member should die in consequence of the violation or attempted violation